

PUBLIC RECORDS REQUEST GUIDE FOR OFFENDERS

**Office of the Indiana Public Access Counselor
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Table of Contents

Introduction	3
Tips for requesting documents.....	4
Purpose.....	5
Types of denial.....	5
Prior to filing a complaint.....	6
Why complaints are returned/rejected.....	7
The formal complaint process.....	9
After the response is issued.....	9
Issues specific to offenders.....	10
PAC opinions in response to complaints filed by offenders.....	11
Frequently Asked Questions.....	12

Introduction

The Office of Public Access Counselor is pleased to provide you with a copy of this “Public Records Request Guide,” created to address the questions and issues offenders face when seeking access to records. The Indiana General Assembly created the Public Access Counselor’s office by statute in July 1999, after Governor Frank O’Bannon had created the office by executive order in 1998. The role of the office, among other things, is to prepare and distribute interpretive and educational materials such as this guide. This guide is available in PDF format on our website, www.IN.gov/pac.

In this guide, you will find information about requesting documents and filing a formal complaint with this office. It will provide guidelines on completing the complaint form, what the process is once the complaint is received, what to expect after the opinion is issued and helpful tips for requesting documents. It is the hope of the Public Access Counselor’s office that this guide will answer questions which may arise as records are requested and complaints are filed.

This guide addresses many issues but is not intended to be a substitute for seeking advice from legal counsel. While this office cannot serve as legal counsel for any person, we are available to answer questions related to Indiana’s public access laws. Please feel free to contact this office using the contact information provided on the front of this guide if you have any questions or problems related to the public access statutes.

Sincerely,

A handwritten signature in cursive script that reads "Heather Willis Neal".

Heather Willis Neal
Indiana Public Access Counselor

Tips for requesting documents

Many offenders file complaints with the Public Access Counselor's office on the basis that the public agency did not respond to the request. In most cases, a public agency did not receive the complaint. The following are tips for requesting records from a public agency. While the Access to Public Records Act does not require all these actions, they will help in obtaining the records requested.

Make sure you have the proper agency.

An agency is not required to provide a record it does not maintain, nor is the agency required to forward the request to the appropriate agency. It is crucial to ensure the request is sent to the appropriate agency, which is the agency responsible for maintaining the record you seek. Guessing which agency is responsible for maintaining the record generally will not yield the desired results.

Have the correct contact information.

Make sure the mailing address is correct. In some cases, public agencies do not respond to a request because they simply do not receive it. An agency may require a request be submitted in writing or on a specific form (I.C. § 5-14-3-3(a)(2)), so having the correct contact information is necessary.

Send it to the right person.

It may be helpful to determine to whom the request should be directed. Several public agencies have public information officers or attorneys who handle public records request. Directing the request to this person will help ensure the timely response to a request.

Do not send record requests to the Public Access Counselor.

The Public Access Counselor cannot find records or determine what agency may have a record. The Public Access Counselor cannot obtain the record for you from another agency.

Be particular about the records.

A record request must be identify the record(s) you are seeking with reasonable particularity. I.C. § 5-14-3-3(a)(1). This means the requester must provide as much information about the record as possible so the agency can clearly identify what records are being requested. An agency may deny a request if it does not know what the request is asking.

Following these simple tips will help ensure record requests are received and documents are provided. They may also help avoid going through the formal complaint procedure.

Purpose for Filing a Formal Complaint

The formal complaint process exists to allow any person to seek and receive interpretation by the Public Access Counselor of issues relating to the Open Door Law and the Access to Public Records Act. The process provides an alternative to litigation for retrieving requested records or settling an issue from a public meeting.

Common types of denial

The formal complaint process first begins with an alleged denial and violation of the public access laws. Here we address only the Access to Public Records Act. Common types of denials are the following:

- ✓ Wrongly denied records
- ✓ Information incorrectly redacted
- ✓ No response from the agency
- ✓ Unreasonable amount of time for record production
- ✓ Excessive copy fees

Wrongly Denied Records

If an agency denies a record request submitted in writing, it must provide the state or federal law allowing it to deny the record. I.C. § 5-14-3-9(c)(2). If the agency fails to provide this or you believe the wrong statute was used to deny your request, you may file a formal complaint.

Information incorrectly redacted

Another form of denial is when information is incorrectly redacted from the records requested. The agency must also provide the state or federal law allowing it to redact certain information. If it does not provide this information, a formal complaint may be filed.

No response from agency

There are specific time restrictions for agencies to follow when responding to requests. An agency has seven days after receipt to respond to a written request that is mailed, faxed or emailed. An agency must respond within twenty-four business hours to a verbal or hand delivered request. A response does not have to be a production of records. It can simply be an acknowledgement of receipt of the request. If an agency does not respond to a request within the allotted time frames, a formal complaint may be filed.

Unreasonable amount of time for record production

There are no prescribed timeframes when the records must be produced by a public agency. It has been determined by the Public Access Counselor that records must be produced within a reasonable amount of time based on the facts and circumstances. If an agency takes an unreasonable amount of time to produce records, a complaint may be filed.

Excessive copy fees

The Access to Public Records Act allows a public agency to set a fee schedule for copies of records. These fees cannot exceed the actual cost to the agency of copying the document and must be uniform for all requesters. There are some statutes,

like those regarding the records maintained by county clerks and recorders, which allow a specific amount to be charge for certain documents. If you believe a copy fee being charged exceeds what the statute allows, you may file a formal complaint with this office.

Prior to filing a formal complaint

The formal complaint process first begins with an alleged violation of either the Access to Public Records Act or the Open Door Law. Once this occurs, several details must be considered prior to filing the complaint:

- ✓ Do I have the correct complaint form?
- ✓ Do I have all the necessary information?
- ✓ Is my complaint an Access to Public Records Act or Open Door Law complaint?
- ✓ Is the complaint within the statutory time limits?

Do I have the correct complaint form?

The Public Access Counselor prescribes a form on which formal complaints must be submitted. You must file a formal complaint using the formal complaint form. The Public Access Counselor will not accept a complaint in the form of a letter. You may request copies of this form by writing to the Office of the Public Access Counselor. This form provides space for all the information necessary for the Public Access Counselor to process the complaint and issue an opinion.

Do I have all the necessary information?

All spaces must be completed. You must describe the denial of access in the space on the form. You can use additional sheets if necessary, and you can send copies of documentation like the agency's written denial of the record. It is usually not helpful to explain why the record is needed or to complain about the agency's conduct, because the opinion seldom concerns those matters. Any information provided to the Office of the Public Access Counselor is considered public record unless a specific statutory exemption applies.

Is my complaint an Access to Public Record Act or Open Door Law issue?

The complaint must concern an issue that is related to the Access to Public Records Act, Open Door Law, or other public access statute. The Public Access Counselor will not accept complaints dealing with issues outside these areas. Also, the agency the complaint is against must be a public agency as defined by statute. The Public Access Counselor cannot accept complaints against private agencies or corporations.

Is the complaint within the statutory time limits?

A formal complaint must be file within thirty days of the denial of records or receiving information regarding a meeting held in secret or without notice. I.C. § 5-14-5-7(a). Complaints filed beyond thirty days are untimely and will be returned.

Why Complaints are rejected or returned

When a complainant fails to provide all the necessary information or follow the previously addressed guidelines, the complaint may be returned for more information or rejected because the complaint does not state a matter subject to the opinion of the Public Access Counselor.

Rejected Complaints

Reasons complaints are rejected include the following:

- ✓ Untimely
- ✓ Not a public agency
- ✓ Not a valid complaint
- ✓ Duplicate or similar
- ✓ Issue previously address

Untimely

A complaint is considered untimely if it is filed more than thirty days after the denial occurred. I.C. § 5-14-5-7. The Public Access Counselor cannot accept untimely complaints.

Not a public agency

Because only public agencies are subject to the Access to Public Records Act, the Public Access Counselor cannot accept complaints against private corporations or non-profit organizations. An agency must fit the definition of a public agency in the Access to Public Records Act. I.C. § 5-14-3-2(1). Companies or corporations that provide services or conduct business with public agencies are not necessarily subjected to the Access to Public Records Act.

Not a valid complaint

The Public Access Counselor cannot accept complaints irrelevant to the Access to Public Records Act or the Open Door Law. The scope of the Public Access Counselor's office does not reach beyond public access laws. The office will not process complaints regarding treatment or alleged denial of food, medical care or other services provided by the correctional facility. Those complaints may be made to the Indiana Department of Correction Ombudsman Bureau. The Bureau's contact information is as follows:

Indiana Ombudsman Bureau
402 W. Washington St., Room W479
Indianapolis, IN 46204
Tel: (317) 232-3055 Email: Ombud@idoa.in.gov

Duplicate or similar complaints

The Public Access Counselor will not accept duplicate complaints. Once the Public Access Counselor writes an opinion, the issue is closed. Duplicate complaints from the same complainant addressing the same issue will not be accepted.

Issue previously addressed

Many of the complaints submitted by offenders are similar to other complaints. The Public Access Counselor will not accept the complaint, but will respond by providing a copy of the previously written opinion.

Returned Complaints

Occasionally complaints are filed that cannot be rejected but also cannot be accepted. These complaints are returned to the complainant for either more information or to provide more time for an actual denial to occur. The reasons complaints may be returned include the following:

- ✓ Improper form
- ✓ Insufficient information
- ✓ Narrative is unclear
- ✓ Request originally sent to wrong agency or address
- ✓ No actual denial has occurred/Not enough time has elapsed since the request

Improper Form

As indicated previously in this guide, the Public Access Counselor prescribes a form for submitting complaints. The Office will not accept complaints submitted without the form. Complaints must be filed on this form in order to provide the Counselor with all the necessary information.

Insufficient information

It is important for the complainant to provide all the information that is requested on the form. The complaint will be returned if the form is not completed in its entirety. The Office of the Public Access Counselor does not have the resources to research the contact information for every complaint it receives. It also is important the information is provided in the allotted spaces and not only in the narrative portion or on some separate form.

Narrative is unclear

On the complaint form, there is space to provide the Public Access Counselor with details of what occurred. Additional sheets may be used if necessary, and copies of documentation like meeting notices or the agency's written denial of the record may be included with the complaint. Please keep the narrative as brief as possible. It is usually not helpful to explain why the record is needed or to complain about the agency's conduct.

Request originally sent to wrong agency or address

Once a complaint is received, if the Public Access Counselor believes the originally request was sent to the wrong address or agency, the complaint will be returned. The complainant will be asked to resubmit the request to the proper agency and/or address. If there is still no response to the request or a denial still occurs, the complainant may resubmit the complaint to the Office of the Public Access Counselor.

No actual denial has occurred

A complaint will be returned if the complainant has not allowed a sufficient amount of time to pass for a denial to occur. A public agency has seven days to respond to a request delivered by mail. I.C. § 5-14-3-9. A complaint may not be filed based on lack of response before this time limit has passed.

Formal Complaint Process

Once a complaint is filed and accepted, the Public Access Counselor notifies the public agency. The agency is given about two weeks to respond.

I.C. § 5-14-5-9 requires the Public Access Counselor to issue an opinion in response to the complaint within thirty days of receiving it. Due to the volume of complaints the office receives, the opinions are not typically issued earlier than the due date.

The thirty day response time means the response will be issued by the thirtieth day and sent as soon as possible after issuance. This does not mean the complainant will receive the opinion on the thirtieth day. It may take a few days to receive the opinion if it is sent by mail, especially considering delivery through the prison mail system is generally slower than other mail.

For a quicker response time, a complainant may request priority status for the complaint and receive an opinion within seven days rather than thirty days. I.C. § 5-14-5-10. *Specific conditions must be met in order for priority status to be granted.* The Public Access Counselor Administrative Rule, 62 IAC 1-1-3, states the following conditions must be met for a complaint to receive priority status:

- (1) The complainant intends to file an action in court under I.C. § 5-14-1.5-7,
- (2) The complainant files a complaint about the conduct of a meeting or an executive session of a public agency which has not yet taken place, or
- (3) The complainant files a complaint concerning denial of access to public records and at least one of the public records requested was sought for use in proceedings of another public agency.

After the response is issued

The “response” the Public Access Counselor provides is called a formal opinion. Once the opinion is issued, a copy is forwarded to the public agency. The opinion is also sent to the complainant, along with a copy of the response from the public agency.

All formal opinions are based on the facts presented to the Public Access Counselor. The Office does not have the resources to conduct an extensive investigation beyond the information provided by the public agency and the complainant.

The opinions issued by the Public Access Counselor are advisory only. The Public Access Counselor has no statutory authority to compel a public agency to produce records. Only a court may compel action. The only method for forcing compliance by a governmental agency is to file a lawsuit.

The complainant may send a letter to refute the opinion of the Public Access Counselor. However, the Public Access Counselor deems a matter closed upon the issuance of a formal opinion. Because the counselor issues only an opinion, there is no appeal process. Any information filed after the opinion is issued will be added to the complaint file for future reference or public inspection.

Issues relevant to Offenders

The majority of complaints from offenders against public agencies regard the time taken to respond to a request, copy fees for documents, and the agency wrongly denying the request. Offenders also request action from the Public Access Counselor, including requests to obtain documents for them and enforce the Access to Public Records Act.

Public agencies have seven days to respond to a written records request. I.C. § 5-14-3-9. Because of the length of time it takes mail to travel through the prison mail system, the requester should allow at least three days for delivery time on each end of the request. In other words, it is best to wait at least ten days before submitting a formal complaint. As stated previously, this response does not have to be a production of documents. It can simply be an acknowledgement of receipt of the request by the public agency.

Another issue raised by offenders is receiving no response from the public agency. The Public Access Counselor's office finds many offenders do not have the correct address for the public agency or even the appropriate public agency responsible for maintaining the requested record. A public agency does not have to respond to a request it does not receive. It is important to have all the correct contact information so the requester may obtain the records requested and avoid the formal complaint process.

The Access to Public Records Act allows for agencies to charge copy fees for records. Many county agencies pass ordinances which establish copy fees. State agencies are not allowed to charge more than \$.10 per copy. Some agencies, such as the county circuit court clerks and county recorders, have state laws requiring them to charge certain fees. Some offenders believe they should not be required to pay for copies of records because they are indigent. *There is no provision in the APRA entitling an offender or anyone else to copies of public records at no charge.*

Many offenders file complaints when their request is simply denied. Agencies must withhold some records which are confidential by either state statute or federal law. The Access to Public Records Act also allows for some records to be withheld by the discretion of the agency.

Agencies can also deny a request if the request is for documents that are not maintained by the agency. While the agency can refer the requester to the correct agency, the agency is not required to do so by law. It is the duty of the requester to find the correct agency in which to send the request.

Offenders often indicate their assumption the Public Access Counselor can either grant a records request or compel an agency to provide documents. The Public Access Counselor can do neither. Records must be requested directly from the agency that maintains them. Requests sent to the Public Access Counselor will be responded to by a letter stating the request must be sent to the correct agency. As discussed previously, the Public Access Counselor has no statutory authority to compel production of documents. Only a court may do so.

Opinions in response to complaints filed by offenders

The Public Access Counselor has previously addressed many issues that are frequently raised by offenders. This next section discusses several opinions relevant to offenders' public access issues.

Receiving copies free of charge

In *Opinion of the Public Access Counselor 07-FC-172*, the complainant requested records from the Marion County Clerk. He included an affidavit of indigence with the request and believed he should receive the records without paying the copy fees. The Public Access Counselor stated there is nothing in the Access to Public Records Act allowing the requester to receive documents free of charge because he is indigent.

Repeated requests

In *Opinion of the Public Access Counselor 08-FC-46*, the complainant claimed he was being denied records. The public agency already provided him with all the records responsive to his request and the agency did not maintain the other records he requested. The Public Access Counselor stated the public agency is not required to provide more than one copy of a document nor is it required to produce records it does not maintain.

Names of employees of correctional facilities

In *Opinion of the Public Access Counselor 07-FC-337*, the complainant requested the names of employees of the Wabash Valley Correctional Facility. While the Department of Correction claimed releasing the information would jeopardize the security system of the facility, the Public Access Counselor disagreed. She said the facility did not have to provide the records because a public agency is not required to make new documents, in this case a list of employees, to respond to a records request.

During the 2008 General Assembly session, legislators passed a bill allowing public agencies to deny offenders records that concern a correctional officer, the victim of a crime, or family members of a correctional officer or victim of a crime. It also allows a public agency to deny a request for records concerning the security of a jail or correctional facility. This law is effective July 1, 2008.

No records responsive

In *Opinion of the Public Access Counselor 07-FC-334*, the complainant claimed he was denied records. However, the public agency from which he requested records did not maintain the records. A person must request records from the agency which maintains them. If an agency does not have the records requested, it is not required to provide those records. That is why it is necessary for a requester to know the correct agency from which to request records.

Agency did not receive request

In *Opinion of the Public Access Counselor 07-FC-174*, the complainant did not receive a response from the agency from which he requested records. The agency responded to the complaint, stating it never received the request. As stated earlier, an agency is not required to respond to a request it does not receive. Having the correct contact information is very important.

Opinions in response to complaints filed by offenders (Continued)

Correctional Facility procedure for requesting records

In *Opinion of the Public Access Counselor 08-FC-11*, the complainant stated he did not receive a response. The public agency, the Wabash Valley Correctional Facility, stated the request was not received because the complainant did not follow the correct procedure for requesting records. A request for inspection or copying must be, at the discretion of the agency, in writing on or in a form provided by the agency. I.C. § 5-14-3-3(a)(2). Therefore, if a correctional facility has a particular procedure for requesting records, it is necessary for the requester to follow it.

Frequently Asked Questions

Do I have to file a formal complaint to get assistance from the Public Access Counselor?

No. The Public Access Counselor can advise you about your rights via the telephone or by e-mail (www.in.gov/pac/contact). In addition, you can send a letter asking for an "informal inquiry response."

Can the Public Access Counselor compel production of records, fine a public official for withholding a record, or declare a board's action void?

No. The Public Access Counselor's office is advisory only. There is no authority for fining a public official who violates the access laws. Under certain circumstances, a court could reverse a decision made in violation of the Open Door Law. The only method for forcing compliance by a governmental agency is to file a lawsuit.

Can the Public Access Counselor provide legal representation?

No. The Public Access Counselor cannot provide legal representation to private citizens or public officials.

Is there a process to appeal an opinion of the Public Access Counselor?

No. Because the Public Access Counselor cannot compel action or impose any sanctions, the Public Access Counselor deems a matter closed after the issuance of a formal opinion. Because the counselor issues only an opinion, there is no appeal process. If there is evidence that may change the Public Access Counselor's opinion, she will review the information and may make necessary amendments to the opinion; this is a rare occurrence.

How long do I have to file a formal complaint?

Generally you must file a formal complaint within thirty days of the denial of your right to attend a meeting or from the day you were denied access to a record. A complaint filed after this time limit will be deemed untimely and rejected. Complaints filed before any denial has occurred (i.e. filed before the seven day time limit to respond has passed) will be returned. The complaint may be resubmitted once the seven day time limit has passed.

Can I be charged for a copy of a record?

For a record from state agencies, the current fee allowed is \$.10 per page for 8 ½ by 11 or 8 1/2 by 14 inch sheets of paper. Other agencies may charge the actual cost of copying, which includes only the cost of the paper and the per-page cost for use of the equipment to reproduce the record. The agency cannot charge anything to allow you to inspect the record. Further, the agency cannot charge a fee to search for the record or any fee to examine or review a record to determine whether the record is disclosable. The fee must be uniform throughout the agency and uniform to all purchasers.